IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) No.2611 of 2006

The Asst. Commissioner of
Income Tax, Circle I, Tirupur. .. Appellant

Vs.

M/s.Sri Mookambigai Spinning
Mills Ltd., 2/167, Ellampalayam
P.O., Pongalur, Coimbatore. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench dated 28.9.2005 in ITA No.1691/Mds/2002, for the assessment year 1992-93 against the order dated 3.8.2002 & made in IT Appeal No.4-C/2002-03 on the file of the Commissioner of Income Tax (Appeals-II) Coimbatore against the order dated 13.2.2002 and made in PAN/GIR No.S.11/circle-I/tiruppur on the file of the Assistant Commissioner of Income Tax, Circle I, Tiruppur.

For Appellant : Mr.N.Muralikumaran

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal in ITA No.1691/Mds/2002 dated 28.9.2005 for the assessment year 1992-93.

2.1. The Revenue is the appellant. On filing the return of income by the assessee for the assessment year 1992-93 on 30.12.1992, assessment was completed on 24.2.1995 accepted the claim of the assessee relating to deduction under section 80HH and 80I. However, raising a doubt that higher deduction under section 80HH and 80I was granted, the assessing officer reopened the assessment under Section

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147 of the Income-tax Act, 1961, by issuing notice under Section 148 of the Act. After completing re-assessment on 13.2.2002, the assessing officer reworked the deduction under section 80HH and 80I by excluding miscellaneous income, viz., interest income and power tariff concessions, holding that these income do not have any direct nexus with the activity of the new industrial undertaking.

2.2. Aggrieved by the order of the assessing officer, the assessee filed an appeal before the Commissioner of Income-tax (Appeals) raising a ground that issuance of notice under section 148 of the Act for reopening the assessment under Section 147 of the Act is invalid, as the facts do not constitute necessary ingredients to empower the assessing officer to initiate re-assessment proceedings, which contention was accepted by the Commissioner by order dated 28.9.2005. The said order was challenged by the Revenue before the Income-tax Appellate Tribunal. The Tribunal, by order dated 28.9.2005, upheld the order of the Commissioner.

2.3. Aggrieved by the said order of the Tribunal, the Revenue has preferred the above appeal raising the following substantial question of law:

> " Whether or not the Explanation 1 and 2 to Sec.147 in the light of the Judgment reported in 273 ITR 347 empowers an Assessing Officer to reopen an assessment when it comes to his notice of the excessive relief granted under the Act ?"

3. Mr.N.Muralikumaran, learned counsel appearing for the Revenue, fairly submits that the issue raised in the above question is squarely covered against the Revenue by the decision of this Court in COMMISSIONER OF INCOME-TAX v. ANNAMALAI FINANCE LTD. [(2005) 275 I.T.R. 451]., wherein this Court, while dealing with the issues with regard to the jurisdiction to reopen the assessment purely based on the change of opinion, finding that the notice for the relevant assessment years was issue after the expiry of the period of four years from the end of the respective assessment years, violating the proviso to section 147 of the Act, held that section 147 of the Act does not postulate conferment of power upon the assessing officer to initiate re-assessment proceedings upon a mere change of opinion after the lapse of four years from the end of the relevant assessment year.

4. Admittedly, in the instant case, the assessee had disclosed fully and truly all the material facts necessary for computing the deduction and there is no failure on the part of the assessee and the claim of the deduction was also accepted by the assessing officer initially. But, finding that excessive deduction had been claimed, the assessing officer issued notice under Section 148 for reopening the assessment after the lapse of four years, violating the proviso

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to Section 147 of the Act, which contemplates thus:

> ".. Provided that where an assessment under sub section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issue under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year."

5. In view of the above, as already stated, there is no failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment and the claim of the assessee was also accepted by the assessing officer initially. Hence, we are of the considered opinion that as per the proviso to section 147 of the Act, the assessing officer does not have any power to reopen the assessment after the lapse of four years from the end of the relevant assessment year, in the absence of failure on the part of the assessee to disclose truly and fully all material facts necessary for the assessment.

6. In PRECOT MILLS LTD. v. COMMISSIONER OF INCOME-TAX [(2005) 273 I.T.R. 347], the books of account produced were to be examined by the authority and in that context, a learned single Judge of this Court accepted the case of Revenue to reopen the assessment, even after the lapse of four years. But, in the instant case, the assessing officer reopened the assessment merely on the basis of change of opinion that the deductions under sections 80HH and 80I granted already during the original assessment were in excess and therefore, the case on hand is squarely covered by the decision of this Court in the case of Annamalai Finance Ltd., 275 I.T.R. 451, cited supra.

7. In this view of the matter, finding no substantial question of law arises for consideration, the above Tax Case Appeal stands dismissed.

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Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan, III Floor,
Besant Nagar, Chennai-90

2.The Assistant Registrar,
Income Tax Appellate Tribunal
Madras Bench "D".

3.The Commissioner of Income-
Tax (Appeals),II Coimbatore.

4.The Assistant Commissioner of
Income-tax, Circle-I, Tirupur.

1 cc to MR.N.Muralikumaran, Advocate, Sr. 57952

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